



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200941038

JUL 13 2009

UIL No. 402.00-00

Legend:

Taxpayer A =

Date 1 =

Date 2 =

Date 3 =

Amount B =

Amount C =

Account G =

Credit Union P =

Plan X =

Dear:

This is in response to your letter dated April 7, 2008, supplemented by correspondence dated November 17, 2008, April 29, 2009 and May 13, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 73, represents that he received a distribution totaling Amount B from Plan X. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to his mental condition which impaired his ability to make financial decisions during the 60-day period. Taxpayer A represents further that no part of Amount B has been used for any purpose other than the payment of taxes related to the failed rollover.

SE: T: EP: RA: TA

Taxpayer A represents that he previously was a participant in Plan X. Taxpayer A asserts that on Date 1 he requested a distribution of Amount B from Plan X, because he believed that he had been told by the plan administrator of Plan X that as a result of his being age 72, and as a result to of the plan administrator no longer managing his 401(k) account, he was required to remove all of his money from Plan X. On Date 2, Taxpayer A deposited Amount C (Amount B less amounts deducted for federal and state tax withholding) into Account G at Credit Union P. Taxpayer A asserts that he did not understand that the transaction on Date 2 did not constitute a valid rollover, and he was unaware of the error until Date 3, when his CPA discovered the error during the preparation of his income taxes.

Taxpayer A represents further that during the relevant period he was receiving treatment for a medical condition and taking doctor-prescribed medication that caused cognitive impairment and mental confusion. Taxpayer A also asserts that during the relevant period his wife was suffering from a severe medical condition, and he had to transport her to various medical facilities for multiple procedures and a surgery. Documentation submitted in support of this ruling request, including a letter from Taxpayer A's doctor, supports Taxpayer A's representations.

Based on the facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 402(c)(3)(A) of the Code, with respect to the distribution of Amount B from Plan X.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement arrangement (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day rollover requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31)(A) of the Code provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides in relevant part, that an eligible rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by his mental condition which impaired his ability to make financial decisions during the 60-day period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into an eligible rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60 day rollover requirement, are met with respect to such contribution, the contribution will be considered a valid rollover contribution within the meaning of section 402(c)(1) of the Code.

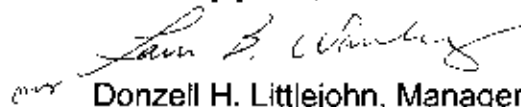
This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at (202) ***. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose